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PROCEDURES SPECIALES DU
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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) G/SO 214 (53-24)
UKR 2/2013

22 July 2013

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 15/21, 15/22, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **alleged enforced psychiatric treatment and confinement of Ms. Raisa Radchenko**.

Ms. Radchenko is a member of several local citizens' associations and actively campaigned against corruption. She has reportedly organized a local petition calling for the resignation of the Mayor of Zaporizhzhya, and in early June visited Kyiv to present petitions to the Prosecutor General and the Presidential Administration.

According to the information received:

On 10 July 2013, two police officers and a psychiatrist allegedly came to Ms. Radchenko's home and allegedly informed her that there had been a court decision stating that she should be subjected to an in-patient psychiatric examination, despite the fact that she has no history of mental illness. It is

reported that Ms. Radchenko refused to open the door because her callers were unable to produce any documentation to confirm this claim.

On 11 July 2013, Ms. Radchenko went to Lenin District Court to obtain information regarding the court order mentioned by the two police officers the day before. There, it is alleged that as many as thirty police officers detained her and restrained her daughter and grandson, leaving her daughter with bruising on her arm.

On 12 July 2013, Ms. Radchenko's daughter reportedly met the head doctor at Zaporizhzhya Regional Psychiatric Hospital and was informed that a court decision had been taken on the basis of allegations of anti-social behaviour by Ms. Radchenko. It is reported that it was only at this stage that Ms. Radchenko's daughter saw a copy of the court decision.

On 13 July 2013, it is reported that Ms. Radchenko met her daughter briefly and informed her that she was already being administered psychiatric treatment without a court decision authorizing her forced treatment. It is alleged that this treatment included the administration of Aminazin, a strong sedative used to treat manic depression and schizophrenia. It is reported that Ms. Radchenko also had bruising on her body.

On 15 July 2013, a court reportedly ordered the treatment of Ms. Radchenko as a psychiatric in-patient on the grounds that she displayed behaviour that "posed a threat to society".

On 16 July 2013, at approximately 10 a.m., Ms. Radchenko's daughter was allegedly visited by a delegation from the local Department for Children's Rights who informed her that they had received a call from an anonymous person who claimed she was not looking after her five year old son adequately. They inspected the flat and wrote a report.

Profound concern is expressed at the alleged forced psychiatric treatment and confinement of Ms. Raisa Radchenko. Further serious concern is expressed at the allegation that she was sectioned without a document confirming the court decision. Concern is also expressed at the physical restraint of Ms. Radchenko's daughter and grandson and at the allegations received indicating that they may be targeted because of Ms. Radchenko's work in defence of human rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

With regard to the alleged forced psychiatric treatment and confinement of Ms. Radchenko, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by your Excellency's Government on 24 February 1987.

In this context, and without in any way implying any conclusion as to whether Ms. Radchenko suffers from a mental disability or not, we would like to draw the attention of your Excellency's Government to the 2013 report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), which states in paragraph 64 that both the mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment (A/63/175, paras. 44, 47, 61, 63; Human Rights Committee, communication No. 110/1981, *Viana Acosta v. Uruguay*, paras. 2.7, 14, 15.) and that to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41). Furthermore, in paragraph 68 the report states that legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished. This must include the repeal of provisions authorizing institutionalization of persons with disabilities for their care and treatment without their free and informed consent, as well as provisions authorizing the preventive detention of persons with disabilities on grounds such as the likelihood of them posing a danger to themselves or others, in all cases in which such grounds of care, treatment and public security are linked in legislation to an apparent or diagnosed mental illness (A/HRC/10/48, paras. 48, 49).

We would like to reiterate that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment believes that except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of "unsound mind". As detention in a psychiatric context may lead to non-consensual psychiatric treatment, the Special Rapporteur states that deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering could fall under the scope of the Convention against Torture (A/HRC/22/53, para. 69).

In this context, we wish to recall the absolute prohibition of torture and ill-treatment, as reiterated in paragraph 1 of Human Rights Council resolution 16/23, adopted in April 2011, which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

With regard to the right of Ms. Radchenko to the highest attainable standard of health, we would like to recall that this right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights – ratified by your country on 12 November 1973—which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. According to the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, the right to health contains both freedoms and entitlements. The freedoms include the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation (para.8).

Furthermore, the right to health creates an obligation on the part of States to respect the right to health, which includes an obligation to refrain from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness, which should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (General Comment 14, para. 34). According to the Principle 4(1) for the Protection of Persons with Mental Illness, a determination that a person has a mental illness “shall be made in accordance with internationally accepted medical standards”, while Principle 1(5) states that “Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”.

Concerning allegedly excessive medical treatment provided to Ms. Radchenko, we would like to refer your Excellency's Government to Principle 8(2) of the Principles for the Protection of Persons with Mental Illness, which states that “Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort”.

Moreover, we wish to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of

association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, in connection to the allegations received indicating that the situation of Ms. Radchenko is linked to her human rights work, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters;

- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Raisa Radchenko in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the full details of the court decision which made possible the alleged forced psychiatric treatment and confinement of Ms. Radchenko.
4. Please provide the details, and where available the results, of any investigation, medical examinations or other inquiries which may have been carried out in relation to this case.
5. Please explain what measures have been taken to ensure that the right to physical and mental integrity of Ms. Radchenko is guaranteed.
6. Please provide information on the measures taken by the Government to ensure the enjoyment of the right to the highest attainable standard of physical and mental health, including the freedom from non-consensual medical treatment and from unjustified medical treatment of Ms. Radchenko.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Raisa Radchenko are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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opinion and expression

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